

APPENDIX B: SHPO AGREEMENT

**PROGRAMMATIC AGREEMENT
AMONG
THE USDI BUREAU OF LAND MANAGEMENT, NEVADA (BLM)
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE BLACK ROCK FIELD OFFICE WILDERNESS MANAGEMENT PLAN**

WHEREAS, BLM approved a Resource Management Plan (RMP) for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wildernesses and Other Contiguous Lands in Nevada in 2004; and

WHEREAS, BLM is now in the process of preparing a Wilderness Management Plan (WMP) to implement the provisions of the RMP in ten Wilderness Areas in the Black Rock Field Office; and

WHEREAS, the BLM has determined that the proposed actions in the Black Rock Field Office WMP in Humboldt, Pershing, and Washoe Counties in Nevada may have an effect upon properties eligible for inclusion in the National Register of Historic Places (NRHP), and have consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS the WMP will be implemented over the course of the next 10 years according to the record of decision; and

WHEREAS some of the elements of the WMP will be designed over the course of the life of the Plan according to changing conditions and cultural resource compliance will be undertaken as the elements of the plan are implemented; and

WHEREAS, this Programmatic Agreement covers all aspects of the planning, development, and construction of the elements of WMP including but not limited to, grazing developments, roads adjacent to the Wilderness Areas, recreation and public use facilities, cultural resource management, commercial uses of the wilderness, fire management, and vegetation management;

NOW THEREFORE, the signatories agree that implementation of the Wilderness Plan shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy BLM Section 106 responsibilities for all aspects of the undertaking.

I. ROLES AND RESPONSIBILITIES

The signatories agree that BLM will be the Lead Federal Agency for implementing this PA. The signatories agree that the BLM/SHPO Statewide Protocol, dated June 4, 1999 except as amended here, will be used as guidance for this PA. This Protocol is incorporated by reference.

The BLM is responsible for administering this PA. This includes but is not limited to: ensuring that all signatories carry out their responsibilities; overseeing all cultural resource work; assembling all submissions to the SHPO - including reports, determinations of eligibility and effect, and treatment or

data recovery plans; and for seeking SHPO concurrence with all agency compliance decisions.

II. AREA OF POTENTIAL EFFECT

The Area of Potential Effect for cultural resources is defined as the boundary of the Planning Area, including areas between the Wilderness Area boundaries and the centerline of adjacent roads where actions are proposed. The Area of Potential Effect (APE) shall be defined to include all potential direct and indirect effects to cultural resources and properties of traditional religious and cultural importance from any activities associated with the undertaking without regard for land ownership. The initial APE is shown on the map in Appendix A.

The minimum APE for any staging areas or other temporary use area will be the footprint of the area plus 100 feet outward in all directions from the perimeter of each area, which could include small areas outside the WMP Planning Area. The APE for assessing indirect effects on historic properties will be the same as for direct effects as there will be no visual impacts from the proposed action on any historic properties outside the APE that would affect the characteristics that qualify them for listing in the National Register of Historic Places.

The BLM may amend the APE as needed or as requested by the SHPO without amending the PA proper.

STIPULATIONS

The BLM, in cooperation with the other signatories shall ensure that the following stipulations are carried out:

A. Identification

1. The BLM, in consultation with the SHPO, shall ensure that all appropriate cultural resource identification activities, including inventory, records research, informant interviews, archaeological, historic, or ethnographic report preparation, and curation based on the APE for all relevant activity areas, or portions thereof, are conducted in a manner consistent with the BLM/SHPO Statewide Protocol.
2. Required identification activities shall be completed regardless of the ownership (Federal or private) of the lands involved and BLM shall be responsible for gaining access to privately held lands through applying all reasonable means available.
3. The BLM shall make a good faith effort to consult with tribes, and identified affected ethnic groups, to identify properties of traditional religious and cultural importance, and to inform the SHPO of their eligibility and suggest appropriate treatment to avoid adverse effects to historic properties. Based on a written request, any federally recognized tribes will be included in this PA as a concurring party. Consultation procedures are specified in Appendix C.

B. Eligibility

1. The BLM shall evaluate all cultural resources located within the APE of each individual action for eligibility to the National Register of Historic Places (NRHP) when appropriate. Eligibility will be determined prior to the initiation of activities that may affect cultural resources.

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Eligibility will be determined using the BLM/SHPO Statewide Protocol as guidance.

2. The BLM, in consultation with the SHPO, shall consult with appropriate tribes, or identified ethnic groups to evaluate the eligibility of properties of traditional religious and cultural importance.
3. To the extent practicable, eligibility determinations shall be based on inventory information. If the information gathered in the inventory is inadequate to determine eligibility, BLM, using its own staff or contractors and subcontractors, shall conduct limited subsurface testing or other evaluative techniques to determine eligibility. As needed, BLM, in consultation with the other signatories, will develop testing plans. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPO. Any proposed testing shall be limited to disturbing no more than 25% of the surface area of the resource being evaluated.
4. If any of the signatories, tribes, or interested parties disagrees regarding eligibility, the BLM shall notify all signatories of the dispute and seek a determination of eligibility from the SHPO. If the dispute cannot be resolved, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be considered final.

C. Treatment

1. In avoiding or mitigating effects, the BLM, in consultation with the SHPO, shall determine the precise nature of effects to historic properties identified in the APE. The BLM/SHPO statewide Protocol will be used as guidance in developing strategies to avoid effects to historic properties. The BLM shall develop a comprehensive treatment or data recovery plan and seek SHPO concurrence on the consolidated plan. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPO.
2. To the extent practicable, the signatories shall ensure that BLM avoids effects to historic properties through project design, or redesign, relocation of facilities, or by other means in a manner consistent with the BLM/SHPO Statewide Protocol. When avoidance is not feasible, the BLM, in consultation with the signatories, identified interested persons, and appropriate tribes, shall develop an appropriate Treatment or Data Recovery Plan designed to lessen or mitigate project-related effects to historic properties.
3. For properties eligible under Criteria (a) through (c), mitigation other than data recovery may be considered in the Treatment Plan (e.g., Historic American Buildings Survey/Historic American Engineering Record recording, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, Treatment Plans shall include provisions (content and number of copies) for a publication for the general public.
4. When data recovery or research-oriented archaeological excavation is proposed, the BLM, in consultation with the SHPO, shall develop a Data Recovery Plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37) and Treatment of Historic Properties: A Handbook (Advisory Council on Historic Preservation 1980).
5. The BLM shall implement and complete the fieldwork portions of any final Treatment or Data Recovery Plan (using BLM staff or contractors and subcontractors) prior to initiating any activities that may affect historic properties located within the area covered by the Plan.

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6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in a BLM-approved facility in Nevada. All materials collected will be maintained in accordance with 36 CFR 79 or 43 CFR 10 until the final treatment report is complete and collections are curated or returned to their owners. BLM will encourage private owners to donate collections from their lands to an appropriate curation facility.
7. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the signatories, tribes, and other interested persons. All such reports shall be consistent with contemporary professional standards and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48FR44716-44740).

D. Discovery Situations

1. Prior to initiating any activities within the APE, all BLM employees, contractors, and subcontractors empowered to halt all activities in a discovery situation be informed about who to contact in the event of any discoveries. At least one of these individuals will be present during all project activities.
2. As soon as there is a discovery or unanticipated impact situation, all activities will halt in the immediate vicinity of the discovery and thereafter be directed away from an area at least 300 feet in all directions from the point of discovery. A BLM archaeologist will visit the discovery location within two working days of the discovery to examine the cultural remains.
3. The BLM shall notify the SHPO, Federal agencies, tribes, and interested parties as appropriate within two working days (through e-mail, telephone, and fax), the discovery or unanticipated impact, and consider their initial comments on the situation. BLM will also initiate the procedures outlines on Appendix B. Within three working days after its initial notification, the BLM shall provide any written assessment of the discovery to signatories or other parties and notify them to either allow activities to proceed or to require further evaluation or mitigation.
4. If, in consultation with the signatories, the BLM determines that mitigation for discoveries or unanticipated impacts is required, the BLM shall solicit comments from the signatories, tribes, and interested persons, as appropriate, to develop mitigating measures. The signatories, tribes, and interested persons, as appropriate, will be allowed three working days to provide BLM with comments to be considered when BLM decides on the nature and extent of mitigative efforts. Within seven working days of initial SHPO notification, the BLM will inform all signatories of the nature of the mitigation required, and ensure that such mitigative actions are implemented before allowing activities to resume.
5. The BLM shall ensure that reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Drafts of such reports shall be submitted to the SHPO for review and comment as set forth in Stipulation H.3. of this PA. Final reports shall be submitted to the SHPO, other signatories, and interested persons for informational purposes.
6. Any disputes or objections arising during a discovery situation that cannot be resolved by the BLM Field Office and SHPO shall be referred to the BLM State Office for resolution. The BLM State Office decision will be considered final.
7. Activities in the area of the discovery will be halted until the BLM authorized officer provides

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written authorization that mitigation is complete and activities can resume.

E. Other Considerations

1. The BLM shall ensure that all stipulations of this PA are carried out by its contractors, subcontractors, or other personnel involved with this undertaking.
2. The BLM shall ensure that ethnographic, historic, architectural, and archaeological work conducted pursuant to this PA is carried out by or under the direct supervision of persons meeting qualifications set forth in the Draft Secretary of the Interior's Professional Qualification Standards dated June 20, 1997 (62FR33707-33723) and who have been permitted for such work by the signatories.
3. The BLM shall ensure that all its personnel and all the personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. All parties shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) on Federal lands and with Nevada statute NRS 383 for private lands.
4. The BLM shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by project-related activity. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, publications for the general public, and the cost of curating project documentation and artifact collections.
5. In general, the identification, evaluation, and treatment of cultural properties directly affected by WMP implementation shall be limited to the individual project-related APE, including all areas needed temporarily for construction. However, identification, evaluation, and treatment efforts may extend beyond the geographic limits of an APE when a resource being considered extends beyond the boundary of an APE. For those cultural properties that extend beyond project boundaries, the identification, evaluation, and treatment activities should be necessary, practical, and reasonable, and the associated expenses should be consistent with comparable activities within boundaries.
6. Properties of traditional religious and cultural importance will be identified, evaluated, and treated through consultation with appropriate tribes. BLM may contract for data gathering to assist in identifying, evaluating, and treating these properties. However, formal consultation, as needed, will be done by the BLM in consultation with the other signatories. Properties of traditional religious and cultural importance identification, evaluation, and treatment efforts shall be consistent with the BLM/SHPO Statewide Protocol.
7. Information on the location and nature of all cultural resources, and all information considered proprietary by tribes, will be held confidential to the extent provided by Federal and state law.
8. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking are treated with the respect due such materials. In coordination with this PA, human remains and associated grave goods found on Federal land will be handled according to the provisions of the NAGPRA and its implementing regulations (43 CFR 10). Human remains and associated grave goods on private land will be handled according to the provisions of Nevada statute NRS 383.

F. Monitoring

1. Any signatory may monitor actions carried out pursuant to this PA. To the extent practicable, all monitoring activities will be done so as to minimize the number of monitors involved in the undertaking.

G. Notices to Proceed

When appropriate, after compliance with Stipulation A.3., the BLM, in consultation with the other signatories, may issue Notices to Proceed (NTP) for individual plan elements, under any of the following conditions:

- (a) The BLM and SHPO have determined that there are no cultural resources within the APE for the construction segment; or
- (b) The BLM and SHPO have determined that there are no historic properties within the APE for the construction segment; or
- (c) The BLM after consultation with the SHPO and interested persons has implemented an adequate Treatment Plan for the construction segment, and
 - (1) The fieldwork phase of the treatment option has been completed; and
 - (2) The BLM has prepared or accepted a summary description of the fieldwork performed and a reporting schedule for that work.

H. Time Frames

1. Reports: BLM shall review and comment on any report submitted by contractors within 30 calendar days of receipt.
2. Consultation with Interested Parties: Prior to SHPO consultation, the BLM shall submit the results of all identification and evaluation efforts, including discovery situations, and Treatment Plans to tribes and other identified interested persons for a 30 calendar-day review and comment period.
3. SHPO Consultation: After review by the other signatories, tribes, and interested parties, BLM shall submit the results of all identification, evaluation, and treatment efforts, including discovery situations, and Treatment or Data Recovery Plans to the SHPO for a 30calendar-day review and comment period.
4. If any signatory to this PA or other interested person fails to respond to the BLM within 30 calendar days of the receipt of a submission, the BLM shall presume concurrence with the findings and recommendations as detailed in the submission and proceed accordingly.
5. Reports: A draft final report of all identification, evaluation, treatment or other mitigative activities will be due to the BLM from any contractor within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
6. Curation: All reports, records, photographs, maps, field notes, artifacts, and other materials collected or developed for any identification, evaluation, or treatment activities will be curated in

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a facility approved by the signatories at the time the final report associated with that activity is accepted by the BLM, unless materials and artifacts must be returned to the owner.

I. Dispute Resolution

1. If any signatory to this PA, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM Field Office shall consult with the objecting party and the SHPO to resolve the issue. If the BLM Field Office determines that the objection cannot be resolved, it shall request the assistance of the BLM State Office to resolve the objection. The BLM State Office decision will be considered final.
2. The signatories may continue all actions under this PA that are not in dispute.

J. Amendment

Any signatory to this PA may request that this PA be amended, whereupon the signatories will consult to consider such amendment.

K. Termination

Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

L. Execution

1. Execution and implementation of this PA evidences that the signatories have satisfied their Section 106 responsibilities for all actions associated with the construction and installation of the WMP elements.
2. This PA shall remain in effect for ten years or until all proposed actions in the implementation plan are completed.

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BUREAU OF LAND MANAGEMENT,
WINNEMUCCA DISTRICT OFFICE, NEVADA

By: _____ Date: _____

Title: _____

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____

Title: _____

CONCURRING PARTY:

By: _____ Date: _____

Title: _____

APPENDIX A: AREA OF POTENTIAL EFFECT

Insert Map

APPENDIX B: DISCOVERY AND UNANTICIPATED IMPACTS PROCEDURES

In the event that previously unknown cultural resources are discovered within the area of potential effects of the WMP, or should known resources be directly or indirectly impacted in an unanticipated manner, the following actions, at a minimum, will be initiated by the BLM in consultation with the signatories:

1. All activities will halt in the immediate vicinity of the discovery and all actions will be directed away from an area at least 300 feet in all directions from the point of discovery.
 - a. BLM cultural staff and SHPO will be notified immediately by the contractors working on the project or BLM staff. BLM will ensure that a cultural resources specialist, with the proper expertise for the suspected resource type, is on-site as soon as possible.
 - b. BLM will initiate consultation with the appropriate parties as set out in Stipulation D of the PA.
 - c. In the event that a cultural resource specialist or other necessary persons are not immediately available, BLM may be required to cover and/or otherwise protect the resource until such time that the appropriate parties can be present for inspection and/or evaluation.
2. Upon arriving at the site of the discovery, the cultural resource specialist shall assess the resource. The assessment shall include:
 - a. The nature of the resource (e.g., number and kinds of artifacts, presence/absence of features). This may require screening of already disturbed deposits, photographs of the discovery, and/or other necessary documentation.
 - b. The spatial extent of the resource. This may require additional subsurface testing, mapping or inspection, as is appropriate to the resource.
 - c. The nature of deposition/exposure. This may require interviews with construction personnel, other persons having knowledge concerning the resource or, in rare instances, the expansion of existing disturbances to establish the characteristics of the deposits.
3. Discoveries and unanticipated impacts to known resources will be managed according to the provisions of this PA. After consultation with the appropriate parties, BLM shall then make a determination of eligibility, treatment and effect. If necessary, BLM, in consultation with the appropriate parties, shall ensure that a treatment plan is prepared following the guidance provided in this PA
4. Any items covered by NAGPRA encountered in a discovery, or unanticipated impact situation, will be handled according to 36 CFR 10 or Nevada state laws, as appropriate.

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5. All WMP implementation activities in the area of the discovery, or unanticipated impact, will be halted until BLM documents in writing that mitigation is complete and activities can resume.

APPENDIX C: TRIBAL CONSULTATION PROCEDURES

I. Identification of Parties for Consultation

Consultation on the WMP was started in February, 2009, following the procedures described below. Parties for consultation were identified by the cultural resource staff from the BLM Winnemucca District Office and the Surprise Field Office of the Susanville District Office who have experience with consultation in the area. Letters were sent to six federally recognized tribes and after follow-up phone calls, a consultation meeting was held with the Summit Lake Paiute Tribe at the Summit Lake Reservation on May 16, 2009. Comments received during the consultation were incorporated into the WMP and the NEPA document (EA).

For implementation of each action over the life of the plan involving archaeological testing or excavation, or any other action identified in initial consultation on the WMP as of interest to Federally-recognized tribes, traditional cultural and religious leaders, and appropriate tribal organizations or interest, additional consultation will be initiated. In addition, based on a written request, any federally recognized tribes will be included in this PA as a concurring party.

II. Consultation Methods

The methods of contacting, communicating, and coordinating will include letters, telephone calls, and/or face-to-face meetings, as appropriate and necessary to afford tribes the opportunity for input.

Letter Contact: The BLM Authorized Officer or designated party will prepare a letter to the identified Tribes as early as possible in the study process explaining the proposed project or activity and indicating that this will begin a formal government-to-government consultation process. The letter will be prepared to ensure that Tribes are part of the initial contact and scoping process. The letter initiating the consultation will be signed by the BLM Authorized Officer.

The proposed activity will be explained in sufficient detail to allow for the Tribe to determine its level of interest, if any. A scope of work, a proposed schedule, and any significant activities, such as scoping meetings, or a decision date will be included as attachments.

Follow-up Phone Contact: The Authorized Officer or designated party will follow-up the initial letter with telephone contacts after 10 working days after the letters have been mailed. Information from these telephone contacts will be documented using the attached telephone log format. This telephone log will be kept up to date and will become part of the administrative record. Any follow-up action recommended by the Tribe(s) will be noted.

Planned Meetings: The Authorized Officer or Designated Party will meet with designated Tribal Leaders and/or designated tribal representatives as soon as possible upon request of the Tribe in order to discuss the proposed project and related issues

Meetings will take place on the reservations or at other mutually agreed upon locations in order to minimize costs to tribal members and to ensure maximum participation.

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Meeting dates will be coordinated with designated Tribal points of contact at least 10 working days prior to the meeting date.

The meeting will be confirmed by a letter to the Tribal leadership, with a copy furnished to the designated tribal representative or point of contact. The letter will include a purpose statement, a proposed agenda and a list of agency attendees.

Meeting summaries will be prepared within 5 working days following the meeting and will be distributed to the tribes, other appropriate parties and team members in draft. Comments will be incorporated as appropriate before finalizing the notes. Final meeting notes will be distributed within 10 working days following distribution of the draft notes.

Concluding Consultation: After reasonable and good faith efforts to address and resolve issues, the BLM Authorized Officer, in consultation with the signatories, will determine the appropriate point of closure of the consultation on the proposed action or project and notify the Tribal leadership levels and representatives in writing. If ongoing consultation is productive, the Federal agencies and officially designated Tribal representative will make that determination and outline the appropriate scope, level, and process. (Ongoing consultation may include such things as continued coordination, updated information and/or participation of tribal monitors.)

III. Telephone Conversation Log

TELEPHONE CONVERSATION RECORD		
Black Rock Field Office Wilderness Management Plan		
SUBJECT		DATE
PROJECT		
Person Initiating Contact		
Person Contacted		
CONVERSATION		